

## CHAPTER 7. IMPLEMENTATION STRUCTURE

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## CHAPTER 7. IMPLEMENTATION STRUCTURE

This chapter describes the institutional structure and organizational arrangements that will be established to govern and implement the BDCP, and sets out the roles, functions, authorities, and responsibilities of the various entities that will participate in plan implementation. The implementation structure is designed to ensure that sufficient institutional expertise, capacity, resources, and focus are brought to bear to accomplish the goals and objectives of the BDCP, that the entities receiving regulatory authorizations are accountable to those agencies granting the regulatory authorizations, and that the decision-making process regarding the implementation of the Plan is transparent and understandable to the public.

The BDCP implementation structure will help ensure effective and efficient plan implementation and ongoing compliance with the terms and conditions of the Plan and its associated regulatory authorizations. This implementation approach will also facilitate the clear delineation of roles and responsibilities among the range of public and private entities participating in the process and help define the nature of their engagement. This approach further reflects the commitment to maintain and encourage ongoing collaboration among the range of public and private parties with interest in the Delta, and to facilitate adaptive and responsive plan implementation, guided by new information and scientific understanding.<sup>1</sup>

The approaches to plan governance set out in this chapter have been designed solely to facilitate the implementation of BDCP actions. If over the course of plan implementation matters arise that are outside the scope of the BDCP, any proposed actions related to those new matters may be implemented through the BDCP only upon appropriate modifications and/or amendments to the Plan.

The BDCP implementation structure will be organized around a Program Manager who will direct a new “BDCP Implementation Office” (IO), and have responsibility for plan implementation and oversight (Figure 7-1). The BDCP Program Manager will coordinate implementation actions with the “Authorized Entities” (i.e., certain of the entities receiving permits or other authorizations under ESA and/or the ~~NCCPA~~ and/or CESA, as defined in section 7.1.2, *Entities to Receive Regulatory Authorizations – Authorized Entities and Other Authorized Entities*), the State and federal fish and wildlife agencies, and a range of stakeholders and other interested parties. ~~The State and federal fish and wildlife agencies will maintain an ongoing role in plan implementations described in this chapter, including participation on a “Permit Oversight Group,” to assure that such implementation is consistent with regulatory authorizations issued pursuant to the BDCP.~~ In addition, a “BDCP Implementation Board,” consisting of the Authorized Entities, will be established to oversee the implementation of the BDCP. Additionally, a “BDCP Stakeholder ~~Committee~~Council” will be

**Comment [ME1]:** Note to Reviewers: The relationship between the BDCP and CESA will be described in Chapter 1.

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<sup>1</sup>The BDCP implementing agreement includes additional detail regarding the roles and responsibilities of the authorized entities, the Implementation Office, and the fish and wildlife agencies regarding the implementation of the Plan.

created to enable public agencies, non-governmental organizations, interested parties, and the public to provide input into the BDCP implementation process. The Implementation Office will also coordinate with the Delta Stewardship Council, Delta Science Program, Sacramento-San Joaquin Delta Conservancy (Delta Conservancy), and Delta Protection Commission to ensure appropriate engagement and collaboration on matters of common interest. This approach to plan implementation is expected to ensure the timely, efficient, and proper implementation of the commitments reflected in the BDCP.

## 7.1 ROLES AND RESPONSIBILITIES OF ENTITIES INVOLVED IN BDCP IMPLEMENTATION

The BDCP Program Manager will be selected to oversee and manage the implementation of the BDCP, and to ensure that implementation proceeds in compliance with the Plan, the Implementing Agreement, and the associated regulatory authorizations. The Program Manager will manage the Implementation Office (IO). Various other parties will be integral to the process of shaping decisions and effectuating actions set out in the BDCP. This section describes the roles and responsibilities of the Program Manager, the IO, and of the various other participants in the implementation process.

### 7.1.1 The BDCP Program Manager and Implementation Office

#### 7.1.1.1 Program Manager: Selection and Designation of Staff

A single BDCP Program Manager will be responsible for BDCP implementation and will direct and oversee the IO. The “Authorized Entities” will each designate a lead representative from their respective agencies to assist the Program Manager with plan implementation. *(The Authorized Entities are identified in Section 7.1.2 Entities to Receive Regulatory Authorizations – Authorized Entities and Other Authorized Entities).* The Program Manager may fulfill the staffing needs of the IO by drawing from existing personnel at DWR, Reclamation, SFCWA, and other sources, as appropriate. Staff of the IO, many of whom will be assigned to the IO by DWR, Reclamation, or other entities, will act under the direction of the Program Manager. The engagement of personnel from DWR, Reclamation, and other entities in the IO, however, will not affect or modify the existing authorities of federal, state, and local agencies or non-governmental organizations that pertain to personnel matters. *The Program Manager and other personnel may be retained under the Intergovernmental Personnel Act [appropriate citations to be added]; through personal services contracts, or other appropriate mechanisms.*

The Authorized Entities for the BDCP will solicit candidates for the Program Manager position. *A definition of “Authorized Entities” is provided in Section 7.1.2 Entities to Receive Regulatory Authorizations – Authorized Entities and Other Authorized Entities.* The Authorized Entities will, by *consensus/mutual agreement*, select the Program Manager after consulting with the federal and State fish and wildlife agencies. The general qualifications of the Program Manager will be as follows:

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- A minimum 10 years experience in the field of natural resources management;
- ~~Experience~~Familiarity with complex natural resources issues, including water resources issues;
- Experience with State and federal regulatory processes that affect water and other natural resources that fall within the scope of the BDCP;
- Experience with multi-stakeholder processes;
- Experience with the administration or management of large-scale programs or projects, including experience with budget management; and
- Excellent communication skills.

The specific roles and responsibilities of the Program Manager are described in further detail in Section 7.2, *Implementation Office Administration*, Section 7.3, *Implementation of the Conservation Strategy*, and Section 7.4, *Regulatory Compliance Related to BDCP Implementation*, and Section 7.5, *Public Outreach*.

#### 7.1.1.2 Science Manager: Selection and Function

The Program Manager will select a Science Manager to assist in the implementation of the BDCP and to ensure that such implementation decisions are guided by the best available scientific information. The Program Manager will consult with the Implementation Board and the fish and wildlife agencies in the selection of the Science Manager. The Science Manager will report to the Program Manager. Specifically, the responsibilities of the Science Manager include:

- Assist in the administration and implementation of the adaptive management program;
- Oversee the implementation of the BDCP monitoring and research program, with the assistance of the IEP;
- Oversee the implementation of the BDCP adaptive management program;
- Engage in regular communication and coordination with the Delta Science Program and coordinate with the Independent Science Board as well as other outside scientists to gather independent scientific information and solicit input and review, as needed, and contract with the board or other scientists to provide such input and review, as needed;
- Support the Program Manager in the preparation of reports and other technical documents; and
- Assist in building sufficient scientific capacity and resources within the IO.

Matters relating to the conduct of scientific reviews and the solicitation of independent scientific advice to assist in the implementation of the BDCP, including independent science review of

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adaptive management decisions affecting water operations, will be conducted by the Science Manager in a manner that ensures their independence and scientific integrity.

Minimum requirements for the Science Manager will be:

- Educational and professional background in relevant scientific disciplines,
- At least 10 years experience in the management of large programs,
- Substantial Experience and managing or senior involvement in the management of large-scale research or monitoring programs,
- and
- Knowledge of familiarity with water management and ecological issues related to the Delta; and
- Excellent communication skills.

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#### 7.1.1.3 Implementation Office: Establishment, Organization, and Functions

The BDCP Implementation Office, under the direction of the Program Manager (Section 7.1.1.1), will implement, coordinate, oversee, and report on all aspects of plan implementation, subject to the limitations set out in section 7.1.4 of this chapter. (see Figure 7-1). The Program Manager, with the assistance of will use the IO staff, will to assure ensure that the BDCP conservation measures, including those related to protection and restoration of habitat; reduction of ecological stressors; management of conserved habitat; and operation of the water projects, including the development of infrastructure (in its oversight role to ensure plan compliance), are properly implemented throughout the life of the Plan. The Program Manager will use the IO staff to will oversee and effectuate the adaptive management program; monitoring, data collection, and scientific research efforts; annual and five-year work plans, budget, and report preparation; and the public outreach process.

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To ensure that the commitments reflected in the BDCP are carried out in a timely and efficient manner, the Program Manager, through the IO, will institute processes and procedures to adequately address planning, budgeting, sequencing, and scheduling needs related to plan implementation. The IO will function with a significant level of independence from its member entities. However, the Program Manager and the IO staff of the IO will work closely with these agencies on a range of matters, particularly with respect to actions that affect water operations.

The IO may enlist other entities to carry out actions associated with conservation measures or other implementation tasks on behalf of the IO (see “Supporting Entities,” below). Notwithstanding the assignment of such responsibilities to other entities to implement projects or actions, the IO will be responsible for ensuring that the work is performed in a manner that complies with the terms and conditions of the BDCP and its associated regulatory authorizations and are properly and fully implemented. As part of that responsibility, the IO will engage and

monitor those entities that become involved in aspects of plan implementation. The Program Manager will oversee and coordinate the management of contracts with these other entities to assist in the implementation of the BDCP. Those entities, and the roles and responsibilities they are likely to assume, are generally identified in this chapter and depicted in the organizational framework in Figure 7-1.

The IO will not be involved in the development or operation of SWP and/or CVP facilities; instead, it will monitor water operations to assemble the information necessary to evaluate and report on compliance with the terms and conditions of the Plan and the authorizations/permits as described in Chapter 6. The BDCP sets out the parameters within which DWR and the Reclamation will carry out CVP and SWP operations and infrastructure development. DWR and Reclamation may choose to operate the projects and develop new infrastructure using their current organizational capacity or by contract with other entities.

The IO will budget for and oversee and coordinate management of the funds and other resources needed to carry out its responsibilities for plan implementation. The Authorized Entities will dedicate, hold, and release funds and resources necessary for plan implementation, and will not commingle these funds with other funds or resources of the agencies. The Authorized Entities will be responsible for all appropriated funds and other funds entrusted to them.

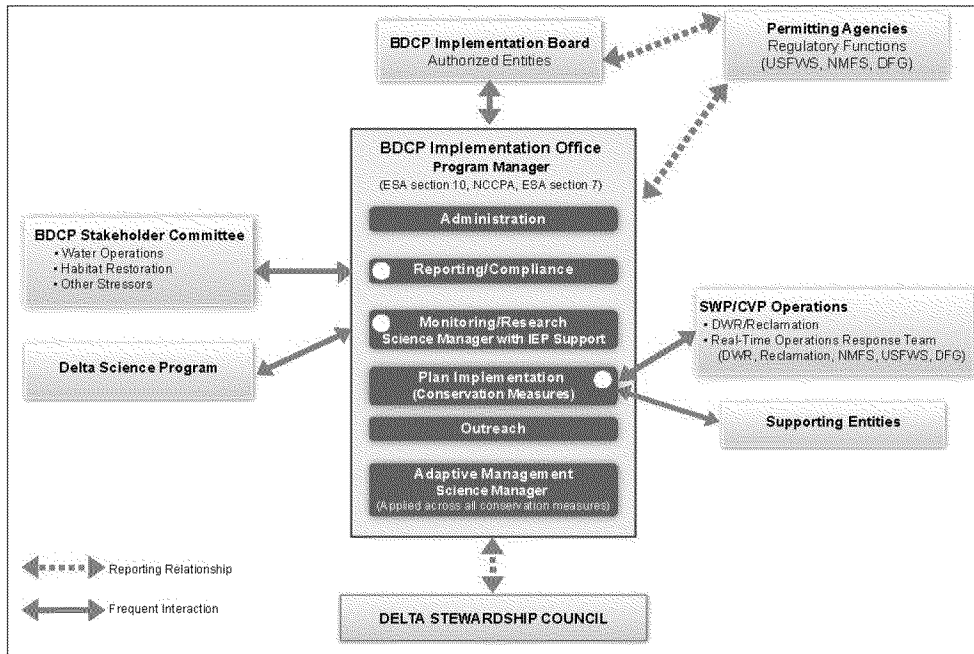
The IO will assume responsibility for the implementation of a broad range of actions, including:

- Oversight and coordination of administration of program funding and resources;
- Preparation of annual budgets and work plans;
- Establishment of procedures to implement plan actions;
- Oversight of and engagement in the implementation of conservation measures;
- Management of the monitoring and research and adaptive management programs;
- Implementation of public outreach program; and
- Fulfillment of compliance monitoring and reporting requirements.

The Program Manager will also have responsibility for coordinating with the Delta-wide governance entities (Section 7.2.7. *Coordination with the Delta Stewardship Council, the Delta Science Program, and the Delta Conservancy*) and managers of upstream operations.

The specific roles and responsibilities of the IO are described in further detail in Sections 7.2 *Implementation Office Administration*, 7.3 *Implementation of the Conservation Strategy*, and 7.4 *Regulatory Compliance Related to BDCP Implementation*, and 7.5 *Public Outreach*.

1



### Figure 7-1. BDCP Implementation Structure

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#### 7.1.1.4 Assignment of Responsibilities

To effectively implement the BDCP, the Program Manager will be assigned certain responsibilities by the ~~Authorized Entities~~Implementation Board. The ~~Authorized Entities~~Implementation Board will provide the Program Manager with sufficient capacity and capability to effectively implement the BDCP and will explicitly define the scope of responsibilities assigned to the Program Manager.

#### 7.1.1.5 No Delegation of Authority

The assignment of responsibility to the Program Manager will not alter or modify existing authorities, mandates, and obligations of the participating State and federal agencies. No general delegation of authority by DWR and/or Reclamation to the Program Manager or one of their employees assigned to the IO will occur, although specific delegation may occur in the event that it is considered by the delegating agency to be beneficial to the efficient operation of the IO. Any such delegation will be conferred, in writing, by the appropriate delegating agency to the appropriate individual within the IO, and will be reviewed by that agency from time to time.

### 7.1.2 Entities to Receive Regulatory Authorizations - Authorized Entities and Other Authorized Entities

The BDCP provides the basis for the issuance of regulatory authorizations, under the federal Endangered Species Act (ESA), the California Natural Community Conservation Planning Act (NCCPA) ~~(and potentially the California Endangered Species Act [CESA]), for the~~for the incidental take of listed fish and wildlife species that result from delta water operations and other covered activities (Chapter 4, *Covered Activities, Section 4.2*). DWR, Reclamation, and certain other agencies that receive incidental take authorizations for activities covered under the BDCP will be referred to collectively as the “Authorized Entities.”

The Authorized Entities will have responsibility for compliance with the terms and conditions of the regulatory authorizations associated with Delta water operations and other covered activities, regardless of whether another entity is tasked with the responsibility for carrying out a required action. Consistent with their roles and responsibilities under the Plan, the Authorized Entities and the Program Manager may enter into agreements individually, amongst themselves, or with other entities, for the purpose of facilitating the implementation of certain BDCP actions. Such agreements will not affect or diminish an Authorized Entity’s established authority and control over a covered activity, such as the operation of the SWP and the CVP, or any other plan action, as provided by law or pursuant to the BDCP and its implementing agreement.

Certain other entities, such as Mirant LLC, may also obtain take authorizations under the Plan for covered activities other than Delta water operations, as specified in Chapter 4.1.2.2. Such other entities will be known as Other Authorized Entities.

Other Authorized Entities will have a limited role in the implementation and governance of the BDCP as specified in the Plan. Incidental take authorizations will be sought by federal and non-federal entities under the following authorities:

- Non-federal entities will seek regulatory coverage pursuant to ESA section 10(a)(1)(B) and, NCCPA section 2835, and potentially CESA section 2081 or 2080.1 (if applicable), and
- Federal agencies will seek regulatory coverage under ESA section 7(a)(2) for federally-listed species

#### 7.1.2.1 Authorized Entities

The entities identified below are “Authorized Entities” for the purpose of the BDCP and its regulatory authorizations. Descriptions of the activities that will be covered under the regulatory authorizations issued to the Authorized Entities are set out in Chapter 4, *Covered Activities*. The activities identified or described in this document for Federal actions by Reclamation are not “covered activities” for the purposes of the ESA section 10(a)(1)(b) permit. Reclamation’s activities are subject to ESA section 7 consultation requirements, and Reclamation is seeking authorization under ESA section 7 for those actions.

##### 7.1.2.1.1 California Department of Water Resources

The State of California owns, and DWR manages and operates, the State Water Project’s (SWP) existing Delta facilities, including the Clifton Court Forebay and the Banks Pumping Plant. Pursuant to the BDCP, DWR seeks State and federal regulatory authorizations to continue to operate such facilities. The State of California, through DWR, will construct, own, and operate any new diversion and conveyance facilities described in this plan.

##### 7.1.2.1.2 United States Bureau of Reclamation

The United States owns, and Reclamation operates, the Central Valley Project’s (CVP) existing Delta facilities, including the Jones Pumping Plant and the Delta Cross Channel. Consistent with the BDCP, Reclamation seeks federal regulatory authorizations through section 7 consultation for incidental take of listed species from project operations in and upstream of the Delta. Reclamation will likely enter into an agreement with DWR to wheel CVP water through a new conveyance facility.

##### 7.1.2.1.3 SWP and CVP Contractors

The SWP and CVP water contractors receive water under contract from the projects. They will also participate in various aspects of the implementation of the BDCP, including the implementation of certain conservation measures. Pursuant to the BDCP, the SWP and CVP contractors will seek State and federal regulatory authorizations for covered activities, as set out in Chapter 4. The SWP and CVP water contractors, individually, will be considered Authorized



Entities under the Plan. However, the water contractors may choose to carry out their responsibilities through SFWCA or other appropriate entities.

*[Note to Reviewers: This section is still in development. Its final form will depend on ongoing discussions between the contractors and the fish and wildlife agencies regarding the proper role of the contractors with respect to their covered activities ~~this section~~. Discussion of this section will be deferred until those discussions are complete.]*

#### 7.1.2.2 Other Authorized Entities

The Other Authorized Entities identified below may seek ~~incidental~~ take authorizations pursuant to the BDCP. However, these entities will not be members of the Implementation Board nor will they have a specific role in the governance of the BDCP, other than as potential members of the Stakeholder ~~Committee~~ Council.

##### 7.1.2.2.1 Mirant Corporation

Mirant owns and operates the Pittsburg and Contra Costa Power Plants located in Pittsburg and Antioch. Mirant may obtain regulatory permits under ESA section 10 and Fish and Game Code section 2835 for ~~incidental~~ the take of listed species from operation of those plants pursuant to the BDCP. In the event it does so, it will be considered an Other Authorized Entity.

##### 7.1.2.2.2 Other Entities

The BDCP covers certain activities that are carried out by [description of those parties will be added] (see Chapter 4, Covered Activities). Take of covered species associated with these activities will be authorized through the State and federal permits issued to DWR under the Plan. The entities that receive such regulatory coverage will be ~~The following entities are engaged in activities that are covered by the BDCP. In the event these entities obtain incidental take authorizations under the BDCP for those activities, they will be considered Other Authorized Entities.~~ *[Note to Reviewers: Once these Other Entities have been identified, they will be listed in this section]*

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#### 7.1.3 Implementation Board

A BDCP Implementation Board will be established to help guide the IO in the implementation of the Plan. The Implementation Board will be composed of the Authorized Entities. Specifically, the Board will provide input to the IO on the proposed Annual Work Plan and Budget, including the anticipated IO actions associated with the adaptive management program and the proposed habitat acquisition and restoration targets. The Board's review of the work plan and budget will focus primarily on the programmatic aspects of the proposed actions. The involvement of the Board in plan implementation is not intended to constrain the Program Manager in day-to-day decision making.

### 7.1.3.1 Function

The Program Manager will organize, convene, and provide support for the Implementation Board and its proceedings.<sup>2</sup> The Implementation Board will receive information from the Program Manager, the State and federal fish and wildlife agencies, and other sources on the implementation of the BDCP generally, and will have the opportunity to review the proposed Annual Work Plan and Budget (as described in Chapter 6), including the targeted acquisitions of land and water interests and the major aspects of anticipated adaptive management actions. The Implementation Board will also work to ensure that the board and the IO foster and maintain a collaborative and constructive relationship with the State and federal fish and wildlife agencies throughout the implementation of the BDCP.

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The participation of the Authorized Entities on the Implementation Board will not trigger or otherwise cause a delegation of authority or responsibility for any of the implementation actions described in the BDCP from one Authorized Entity to another. Rather, the specific roles and level of involvement in BDCP implementation actions are defined either by existing statutory and regulatory mandates or by provisions set out in this Plan and its associated Implementing Agreement. For many of the BDCP actions and commitments, a specific Authorized Entity will have the sole responsibility for implementation; for other actions and commitments established by the Plan, the Authorized Entities may be jointly and severally responsible for their implementation. For instance, the operation of the SWP will remain under the control and responsibility solely of DWR; likewise, the operation of the CVP will continue to be under the control and responsibility of Reclamation.

The primary function of the Implementation Board will be to review and concur with the Annual Work Plan and Budget as proposed by the Program Manager. The content of the Annual Work Plan and Budget and the timing of preparation and submission of the document to the Implementation Board are described in Section 6.2 *Compliance and Progress Reporting*. The Annual Work Plan and Budget will be deemed to be “final” once (i) accepted by the Board or (ii) objections to the work plan and budget are resolved through the final decisional authorities (see *Dispute Resolution*, below). The Board may be convened by the Program Manager periodically through the year, as needed, to review issues that arise in the implementation of the annual plan. The Program Manager may request that the Board reconvene to consider proposed amendments to the Annual Work Plan and Budget.

The Implementation Board will consider such matters as:

- Candidates for the Program Manager position;
- Annual work plans and budgets; and
- Adaptive management changes.

<sup>2</sup> If the Program Manager position is vacant, then DWR and Reclamation will serve this role.

The Implementation Board will meet, at a minimum, on a quarterly basis. The date, time, and location of Implementation Board meetings will be posted on the BDCP website at least ~~30~~ days prior to such meeting. A majority of the Implementation Board meetings will be held at locations within the City of Sacramento or the legal Delta. All meetings of the Implementation Board will be open to the public, as provided by applicable law.

The Implementation Board will also meet with the Permit Oversight Group (see section 7.1.5), at least on a quarterly basis. The Implementation Board will institute the same procedures with respect to public notice of and access to meetings with the Permit Oversight Group as it establishes for its regular meetings.

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#### **7.1.3.2 Dispute Resolution**

With respect to those matters that are considered by the Implementation Board, it is expected that reasonable efforts will be made to provide input to the Program Manager that reflects acceptance by the members. A board member, however, will have the right to object to any proposal of the Program Manager concerning the annual work plans, reports, budgets, the acquisition of land and water interests, and the major elements of the adaptive management program. Any objections will be made ~~solely~~ on the basis that the proposal (i) will not adequately contribute to achievement of the goals and objectives of the BDCP or (ii) is inconsistent with the requirements of the Plan and/or the permits/authorizations.

The board member may elevate the matter to the regional director(s) of the relevant federal agency, to the director(s) of the relevant state agency, or to other appropriate authorities, as determined by the locus of responsibility for the action (see examples below). A simplified process for considering and responding to such objections in an orderly and timely manner will be established, including a process to elevate appropriate matters for decision to the responsible official, be it a federal or State cabinet-level official or their designee, or another corresponding authority for other locus of responsibility entities, such as a Delta Conservancy, the SFWCA, or a State or federal water contractor. As required by existing law, final responsibility for plan implementation and permit compliance with regulatory authorizations will remain with the Authorized Entities. The objection procedures and dispute resolution process may not be used to delay the completion and/or implementation of the Annual Work Plan and Budget.

~~Examples of locus of responsibility:~~

~~DWR would be responsible for actions that affect facilities or operations of the SWP;~~

~~Reclamation would be responsible for actions that affect facilities or operations of the CVP;~~

~~SFCWA would be responsible for actions that would result in changes to costs of conservation measures for which they have provided funding;~~

Delta Conservancy would be responsible for projects charged to the Delta Conservancy through future specific State legislation or bond requirements.

Implementation Board dispute resolution procedures will be developed for the Plan included in the Implementing Agreement.

#### 7.1.4 DWR and Reclamation: Operation of the SWP and CVP

Implementation of the conservation measures related to water facilities and water operations, as described in Chapter 3 *Conservation Strategy*, will be the responsibility of DWR and Reclamation or entities with whom they may contract. DWR and Reclamation will retain their authority to operate the SWP and the CVP within the parameters of the BDCP and other applicable laws and regulations.

The federal and state operators of the CVP and the SWP will prepare coordinated operation strategies for the federal and state Projects, including the Annual Water Operations Strategy as described in as described in Section 6.2, *Compliance and Progress Reporting*. The IO will incorporate the Annual Water Operations Strategy into the BDCP Annual Work Plan and Budget (as described in Section 6.2, *Compliance and Progress Reporting*).

Decisions related to “real time” water operations will be the responsibility of the Real Time Response Team, as described in Section 7.3.2, *Implementation of Water Operations Conservation Measures*.

#### 7.1.5 Permitting Agencies Oversight Group: Fish and Wildlife Agencies

On the basis of the BDCP, the State and federal fish and wildlife agencies (USFWS, NMFS, and DFG) will issue regulatory authorizations to the Authorized Entities and Other Authorized Entities pursuant to the federal ESA and the NCCPA, as applicable. Consistent with their authorities under these laws, the fish and wildlife agencies will retain responsibility for enforcing the terms and conditions of their respective permits and regulatory authorizations. The fish and wildlife agencies retain full responsibility to: (i) determine whether implementation of the BDCP is proceeding in compliance with the terms and conditions of their respective regulatory authorizations, (ii) enforce the terms and conditions of the regulatory authorizations, and (iii) modify, suspend, or revoke regulatory authorizations, consistent with the terms and conditions of the Plan, the Implementing Agreement, and applicable State and/or federal law. To facilitate coordination in such compliance oversight, the fish and wildlife agencies will form a Permit Oversight Group. This group will not be a separate legal entity, and the agencies will not delegate any of their respective authorities to the group.

In addition to fulfilling the foregoing regulatory responsibilities, the State and federal fish and wildlife agencies will also provide input on a range of implementation actions that will be carried out by the IO and overseen by the Implementation Board. The parties that will be engaged in the

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1 implementation of the BDCP recognize that substantial coordination and cooperation between  
2 the fish and wildlife agencies, the Implementation Board, and Implementation Office will be  
3 necessary to ensure the overall success of the Plan. As such, these parties will, on an ongoing  
4 basis, collaborate on various elements of plan implementation. The IO will work with the fish  
5 and wildlife agencies and the Implementation Board to institute mutually-agreeable processes to  
6 enhance opportunities for such collaboration and engagement.

#### 7 7.1.5.1 California Department of Fish and Game

8 DFG is the agency of the State of California authorized to act as trustee for the state's wildlife.  
9 DFG administers and enforces CESA, the NCCPA and other provisions of the Fish and Game  
10 Code. DFG is authorized to enter into agreements with federal and local governments and other  
11 entities for the conservation of species and habitats, to authorize take under CESA and the  
12 NCCPA, and to provide ~~statutory~~regulatory assurances under NCCPA. On an ongoing basis,  
13 DFG will consult with the IO and the ~~a~~Authorized ~~e~~Entities on various aspects of plan  
14 implementation, including participation in real-time operations decisions, the adaptive  
15 management process, and the monitoring and science programs. DFG will also maintain  
16 responsibility for plan enforcement, consistent with the NCCPA and other authorities. DFG  
17 owns and manages land within the Plan Area, and may, at the request of the IO, enter into  
18 agreements whereby it operates and maintains certain habitat areas that are developed through  
19 BDCP habitat preservation and restoration actions. DFG is jointly responsible for  
20 implementation of the Ecosystem Restoration Program, which was established to advance  
21 ecosystem restoration projects in the San Francisco Bay Delta and its tributaries.

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#### 22 7.1.5.2 National Marine Fisheries Service

23 NMFS is an agency of the United States Department of Commerce authorized by Congress to  
24 administer and enforce the ESA with respect to marine mammals and certain fish species  
25 (including anadromous fish); to enter into agreements with states, local governments, and other  
26 entities to conserve federally threatened, endangered, and other species of concern; to authorize  
27 incidental take under ESA; and to provide regulatory assurances in accordance with 50 C.F.R.  
28 section 222.307(g). On an ongoing basis, NMFS will consult with the IO and the ~~a~~Authorized  
29 ~~e~~Entities on BDCP implementation, including participation in the real-time operation and  
30 adaptive management processes and the monitoring and science programs. NMFS will also  
31 maintain responsibility, jointly with USFWS, for plan enforcement consistent with the ESA and  
32 other authorities. NMFS is jointly responsible for implementation of the Ecosystem Restoration  
33 Program, which was established to advance ecosystem restoration projects in the San Francisco  
34 Bay Delta and its tributaries.

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#### 35 7.1.5.3 United States Fish and Wildlife Service

36 The USFWS is an agency of the United States Department of the Interior authorized by Congress  
37 to administer and enforce the ESA with respect to terrestrial wildlife, certain fish species, insects  
38 and plants, to enter into agreements with states, local governments, and other entities to conserve



threatened, endangered, and other species of concern, to authorize incidental take under ESA, and to provide regulatory assurances in accordance with 50 CFR section 17.22(b)(5) and section 17.32(b)(5). On an ongoing basis, USFWS will consult with the IO and the authorized entities on various aspects of plan implementation, including participation in real-time operations decisions, the adaptive management process, and the monitoring and science programs. USFWS will also maintain responsibility, jointly with NMFS, for plan enforcement consistent with the ESA and other authorities. USFWS may also, at the request of the IO, enter into agreements whereby it operates and maintains certain habitat areas that are developed through BDCP habitat preservation and restoration actions. USFWS is jointly responsible for implementation of the Ecosystem Restoration Program, which was established to advance ecosystem restoration projects in the San Francisco Bay Delta and its tributaries

### 7.1.6 Other Regulatory Agencies

The BDCP has been developed as a conservation plan pursuant to the ESA and the NCCPA. To implement the BDCP, certain conservation actions will need to conform to the requirements of various other State and federal laws and regulations not specifically addressed by the Plan. Prior to the implementation of many of the conservation actions set out in the BDCP, regulatory authorizations and approvals will need to be obtained from State and federal agencies under applicable laws. These other agencies will participate in the governance of plan implementation as provided in their regulatory authorizations and approvals related to the Plan. To facilitate compliance with these laws and regulations, the IO will work closely with the appropriate regulatory agencies to plan in advance of future permitting needs and establish processes to expedite such authorizations.

In addition, certain Potential Conservation Measures to Address Other Stressors, as described in Chapter 3, have been identified that fall within the jurisdictional responsibility of other State and/or federal regulatory agencies. The USFWS, NMFS, DFG, State and federal fish and wildlife agencies, and the IO will work with these regulatory agencies to encourage the implementation of the Potential Conservation Measures. To the extent appropriate, the IO will seek to integrate Potential Conservation Measures into the BDCP Conservation Strategy.

It is expected that the actions set out in the BDCP are likely to involve some or all of the following statutes: California Water Code sections 1000 *et seq.* (water rights), Water Code sections 13000 *et seq.* (water quality), California Fish and Game Code sections 1600 and 5900 *et seq.* (channel modification, fish screens), Clean Water Act section 401 (water quality) and section 404 (placement of dredge and fill), Rivers and Harbors Act section 408 (work on levees), Rivers and Harbors Act section 10 (navigation), the Migratory Bird Treaty Act (migratory birds), and the Federal Energy Regulatory Act implemented by the Federal Energy Regulatory Commission.

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### 7.1.7 Supporting Entities

The Program Manager may assign specific implementation tasks to other entities, referred to as “Supporting Entities,” that have the authority, resources, expertise, and willingness to successfully and timely undertake and complete the task. Where specific tasks are so assigned, the Program Manager will ensure that that tasks and associated responsibilities are carried out properly and in coordination with other BDCP actions. Supporting entities may include, among others:

- DWR.
- Reclamation.
- SFCWA or individual SWP and CVP contractors. It is anticipated that the SFCWA will be substantially involved in the implementation of the BDCP, and will likely assume responsibility for implementing a number of BDCP actions.
- The Delta Conservancy. The Delta Conservancy has been designated by statute as a primary State agency to implement ecosystem restoration in the Delta.
- Sponsors of regional conservation planning programs, including those engaged in NCCP and/or HCP development or implementation, or of other similar conservation programs, that overlap or are adjacent to the Plan Area.
- State and federal regulatory agencies, including USFWS, NMFS, and DFG. In addition to acting in their regulatory roles, these entities may act as supporting entities.
- Other public agencies and private entities that have authority, capacity, or expertise to implement actions described in the conservation strategy in a cost-effective, reliable, and timely manner.

The Program Manager will oversee each supporting entity’s performance of its responsibility for carrying out a specific task. Decisions by the Program Manager to engage another entity in the implementation of specific plan elements or actions will be accomplished by written contract and will be based on the entity’s jurisdictional authority, level of expertise, and its capacity to carry out the element or action in a timely and successful manner. The ~~Implementation Board~~ Program Manager may terminate a supporting entity’s role in plan implementation in the event that the supporting entity does not perform a task adequately.

The take authorizations that will be issued pursuant to the BDCP will provide regulatory coverage under the ESA and the NCCPA for all activities covered by the Plan. As such, no additional take authorizations will be required to implement these activities, regardless of whether the action is carried out by the IO or a ~~S~~supporting ~~E~~ntity.

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### 7.1.8 BDCP Stakeholder ~~Committee~~Council

A BDCP Stakeholder ~~Committee~~Council will be established and convened by the Program Manager. The Stakeholder ~~Committee~~Council will consider and discuss matters related to plan implementation, and provide input on such matters to the IO. The primary purpose of the ~~committee~~council is to provide ongoing opportunities for the BDCP stakeholders to assess the implementation of the Plan, and to propose to the IO ways in which plan implementation may be improved or enhanced.

#### 7.1.8.1 Membership

The Stakeholder ~~Council~~Committee will consist of representatives from a range of entities and organizations with an interest in BDCP-related issues or otherwise engaged in BDCP matters. Members of the ~~Committee~~council will at a minimum include, but not be limited to:

- The Program Manager for the BDCP Implementation Office
- Representatives of DWR and the Bureau of Reclamation
- Representatives of the SFCWA
- Representatives of Other Authorized Entities
- Representatives of FWS, NMFS, and DFG
- Representatives of other State and federal regulatory agencies, including the Army Corps of Engineers, the U.S. Environmental Protection Agency, and State Water Resources Control Board.
- A representative of the Delta Stewardship Council
- A representative of the Delta Protection Commission
- A representative of the Delta Conservancy
- A representative of the Central Valley Flood Protection Board
- Representatives of the counties of San Joaquin, Sacramento, Solano, Yolo, and Contra Costa
- \_\_\_\_\_

Additional members will be selected from the following categories by the Secretary of the California Natural Resources Agency, in consultation with the directors of the relevant departments comprising the Agency, such as DWR and DFG. The public may submit nominations to the Secretary for these additional members. Each member will serve a term of four years, and may be reappointed without limit and may serve until such time as they are replaced.

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- At least three representatives from conservation groups with expertise in fish and wildlife management and/or the management of aquatic habitats and other natural lands
- At least three representatives of local government agencies within the Delta.
- At least one representative of fishing organizations
- At least one representative of hunting organizations
- At least one representative of recreational organizations
- At least ~~one~~two representatives of delta reclamation districts
- At least two representatives of Delta agriculture
- At least three scientists with expertise in the management of natural lands, and native plant and animals species
- At least one representative of water agencies located in the Sacramento valley
- At least one representative of water agencies in the San Joaquin River watershed
- Other stakeholders whose assistance will increase the likelihood of the success of plan implementation, including delta civic organizations and members of the general public.

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#### 7.1.8.2 Function

The Program Manager will convene and facilitate the Stakeholder ~~Committee~~Council on at least a quarterly basis to exchange information and provide input to the Program Manager concerning the current significant issues at hand. Stakeholders will have opportunity to inquire about implementation matters, be apprised by the Program Manager of issues of interest, and make recommendations concerning pending decisions. Stakeholder ~~Committee~~Council meetings will be open to the public.

For the benefit of the Stakeholder ~~Committee~~Council members and the general public, the Program Manager will provide information and conduct briefings regarding plan implementation. Briefings will include presentations of drafts of the Annual Report, Annual Work Plan, Annual Water Operation Strategy, the Annual Water Operations Report, and the Five Year Implementation Plan, as described in Chapter 6. In addition, to further facilitate access to information and promote transparency in decision-making, the IO will maintain a public, on-line data base of key documents and information, such as annual implementation reports, work plans, and budgets (Section 6.2, *Compliance and Progress Reporting*).

The Stakeholder ~~Committee~~Council will develop its own internal organization and process by ~~committee consensus to best coordinate with~~consider the various aspects of BDCP implementation. A “Technical Facilitation” sub~~committee~~group will be established to provide

input to the Program Manager on technical and scientific matters. The Stakeholder Committee Council process will complement, but not substitute for, ongoing collaboration and communication between stakeholders and the IO, ~~Authorized entities~~, the Implementation Board, and the fish and wildlife agencies. The IO will organize, help convene, and provide support for the Stakeholder Committee Council and its proceedings.

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### 7.1.8.3 Dispute Resolution

With respect to those matters that are considered by the Stakeholder Committee Council, it is expected that the council will make reasonable efforts will be made to provide input to the Program Manager and Implementation Board that reflects the acceptance general agreement of by the members. Any member of the committee council, however, will have the right to object to any proposal of the Program Manager concerning the annual work plans, annual reports, budgets, the acquisition of land and water interests, or the major elements of the adaptive management program, as set out in Chapters 3 and 6. Any member may also object to any prior implementation action taken by the Program Manager. Any such objections will be made solely on the basis that the proposal (i) will not adequately contribute to achievement of the goals and objectives of the BDCP or (ii) is inconsistent with the requirements of the Plan and/or the permits/authorizations.

In consultation with the Implementation Office, the Stakeholder Committee Council will establish a process for efficient consideration and resolution of any objections that may arise within the committee council related to the implementation of the plan. Under that process, a member of the Stakeholder Committee Council may, at its discretion, object to a proposal or prior action related to such implementation. The member may object on behalf of itself or an entity it represents. The committee council will make reasonable efforts to resolve the dispute by consensus general agreement. Consistent with section 7.1.3.2, a dispute (and any consensus generally agreed upon recommendation for resolution) will be elevated: (i) to the Implementation Board; and (ii) if unresolved as between the Implementation Board and objecting member(s) of the Stakeholder Committee Council, for decision by the entity with the locus of responsibility for the action or proposal in dispute ultimate authority over the matter. As required by existing law, final responsibility for plan implementation and compliance with the regulatory authorizations will remain with the Authorized Entities, as defined within the BDCP and its implementing agreement.

The Stakeholder Council will take action on a dispute within 60 days. If the dispute is not resolved within the 60 day period, the issue in dispute will be elevated to the Implementation Board for its consideration. If the Implementation Board fails to resolve the dispute within 90 days, the issue in dispute will be referred to the entity with the locus of responsibility over the matter.

The objection procedures and dispute resolution process above may not be used to delay the completion and/or implementation of the Annual Work Plan and Budget. This process does not

substitute for any right or claim which a member of the Stakeholder ~~Committee~~ Council or other entity may have under existing law or contract (e.g., with respect to claims related to private property damages caused associated with ~~by~~ plan implementation). The process does not create a new right or claim which does not arise under existing law.

### 7.1.9 The General Public

The BDCP implementation process will provide for ongoing and frequent engagement and participation of the public. Other entities that have interests in the conservation of Delta resources, may participate in BDCP implementation through the public outreach process coordinated by the IO (Section 7.5 *Public Outreach*) or through the BDCP Stakeholder ~~Committee~~ Council, if eligible for membership. Stakeholder ~~Committee~~ Council meetings will be noticed in advance and open to the public, and will be conducted in a manner that provides adequate opportunity for ~~specific times made available for public comment.~~

## 7.2 IMPLEMENTATION OFFICE ADMINISTRATION

The Program Manager direct, oversee, and select staff for the IO. The IO, which will not be a legal entity authorized to enter into contracts directly or hold property in its own name, but will instead administer the implementation of the BDCP under the existing authorities of the ~~a~~Authorized ~~e~~Entities. By relying on the legal authorities of the ~~a~~Authorized ~~e~~Entities, the IO will be equipped with the resources and capacity necessary to carry out BDCP implementation tasks for which it will be responsible. This structure also contemplates that DWR and the Reclamation will maintain their historic roles as owners and operators of the SWP and CVP, but provides flexibility for changing those roles if so directed by Congress, the California Legislature, or through administrative processes.

Proper implementation of the Plan will require a skilled and expert team consisting of administrators, policy-makers, scientists, engineers, data analysts, and regulatory specialists, capable of working together in a cohesive and unified manner. In addition, effective implementation will necessitate adequate financing of and support for the IO. The BDCP includes funding assurances (Chapter 8 *Implementation Cost and Funding*) that the IO will have such capacity to carry out the responsibilities described in this chapter.

The Program Manager may assign specific implementation tasks to other entities that have the authority, resources, and expertise to successfully complete the task in a timely manner. These other entities can, at the discretion of the Program Manager, include an ~~a~~Authorized ~~e~~Entity, a regulatory agency, a supporting entity, or any combination thereof. Where specific tasks are so assigned, the Program Manager will ensure that that tasks and associated responsibilities are carried out properly and in coordination with other BDCP actions. The entity selected will be responsible, subject to oversight by the Program Manager, for entering into the necessary

contracts and acquiring title to interests in real and personal property, acquiring permits, and taking all other steps needed to complete the implementation task.

The IO's primary functions and responsibilities are described in the following subsections.

### 7.2.1 Establishing Administrative Capacity

The Program Manager will manage the IO. ~~The Program Manager will enter into an employment relationship with one of the authorized entities. However, the Program Manager will be responsive to all of the authorized entities, regardless of the entity through which the Program Manager has established an employment relationship.~~

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The Program Manager will arrange for and equip the IO office space, hire a staff of sufficient size, and enter into contracts (through the authorities of DWR, Reclamation, and/or other authorized entities other State and federal agencies, and/or the State and federal water contractors) to build capacity to become fully functional and operational.

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The Program Manager, with the consent of and pursuant to agreements with any affected agencies, may enlist current employees of the Implementation Board's member agencies, as well as employees of other State, federal, or local agencies, who possess the expertise and experience necessary to carry out the tasks associated with BDCP implementation. The specific staffing needs of the IO will be determined by the Program Manager. All IO staff, including staff from entities that are members of the Implementation Board will work at the direction of the Program Manager.

### 7.2.2 Preparing Budgets and Managing Expenditures

The Program Manager will develop, propose, and administer budgets for general program administration for acceptance by the Implementation Board pursuant to the dispute resolution process (Section 7.1.3.2, *Dispute Resolution*). The Program Manager will establish systems and processes to centralize oversight of implementation budgets and related expenditures. The Program Manager will also generally oversee budgets and expenditures related to implementation actions carried out by authorized entities or supporting entities.

### 7.2.3 Contracting for Services

The IO, through the appropriate entity, may contract for services as necessary to implement the BDCP, including for professional services related to:

- Acquisition and protection of habitat;
- Habitat restoration and management;
- Monitoring and scientific research;
- Legal and regulatory matters;



- Environmental and technical services;
- Engineering and construction (e.g., conservation facilities, water facilities, levees);
- Funding and grant agreements pertaining to state and federal programs and executing sub-grants to third-parties to conduct specific actions; and
- Operations and maintenance.

The Program Manager shall administer such contracts.

#### **7.2.4 Securing, Holding, and Managing Funds to Support Implementation Actions**

The IO will coordinate the expenditure of funds from State, federal, and other sources that have been dedicated to the implementation of the BDCP. At least one State and one federal agency member of the Implementation Board will serve as the fiscal agents, consistent with existing agency authorities, for the expenditure of funds by the IO, from both public and private sources, to support implementation actions. The IO will not be authorized to manage the expenditure of funds related to design, construction, operation and maintenance of water diversion and conveyance facilities which are or will be elements of the SWP or CVP.

#### **7.2.5 Coordinating with the Authorized Entities, the Implementation Board, and Supporting Entities**

The Program Manager will convene meetings and facilitate communication with the ~~a~~Authorized ~~e~~Entities, Implementation Board, and supporting entities. The Program Manager will maintain frequent contact with these entities and provide regular updates concerning implementation matters, including progress in meeting BDCP timetables, dissemination of information, and maintenance and availability of BDCP records and reports.

#### **7.2.6 Coordinating with Regulatory Agencies —Facilitation Team**

~~The IO will coordinate and collaborate with the USFWS, NMFS, DFG State and federal fish and wildlife agencies, including the Permit Oversight Group, U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, the State Water Resources Control Board, and other appropriate regulatory agencies will coordinate and collaborate through the Facilitation Team with the IO on matters potentially affecting compliance with the terms and conditions of the BDCP, and its associated regulatory authorizations, and other regulatory authorizations required to implement BDCP actions. The specific roles of the State and federal fish and wildlife agencies in various plan implementation actions are described primarily in Chapters 3 and 6. The Program Manager will coordinate and lead Facilitation Team meetings convened for such purposes.~~

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### 7.2.7 Coordinating with the Delta Stewardship Council, Delta Science Program, and Delta Conservancy

The Program Manager will facilitate and monitor the effective and efficient incorporation of the BDCP into the Delta Stewardship Council's Delta Plan (Delta Plan).<sup>3</sup> The Program Manager will report, at least annually, to the Delta Stewardship Council on the progress of BDCP implementation, including the status of monitoring programs and adaptive management, as required by Water Code section 85320(f). The IO will also respond to questions or concerns raised by the Delta Stewardship Council regarding the implementation of the BDCP.

The IO, lead by the Science Manager, will coordinate with the Delta Science Program and, as necessary, the Delta Independent Science Board,<sup>4</sup> regarding scientific assistance in the formulation and implementation of monitoring activities and research efforts to support the BDCP adaptive management process.

The IO will coordinate with the Delta Conservancy concerning implementation of ecosystem restoration projects carried out pursuant to the BDCP Conservation Strategy and other programs being carried out by the Delta Conservancy.

### 7.2.8 Coordinating with Local Governments, Delta Protection Commission, and Other Public Agencies

The Program Manager will serve as the main point of contact for local, State, and federal agencies interested or engaged in BDCP implementation issues. The Program Manager will prepare, publish, and distribute general information about the BDCP to those agencies and serve as representative of the BDCP in public meetings convened by cities, counties, water and reclamation districts, and other public agencies with jurisdiction within the Delta. The Program Manager will encourage local government participation on the BDCP Stakeholder Committee~~Council~~.

Where regional conservation plans overlap with or adjoin the Plan Area, the IO will collaborate and coordinate with the sponsors of those regional conservation plans on the acquisition and management of habitat lands to be preserved and/or restored within areas common to both plans. The Program Manager will, as appropriate, enlist sponsors of those regional conservation plans and local governments to serve as BDCP supporting entities to assist in the acquisition and/or management of conservation lands. Where mutually beneficial, the IO will encourage joint acquisitions of land with local government plan sponsors to realize economies-of-scale and to secure large, contiguous blocks of habitat. The IO will explore opportunities to fund early conservation actions (i.e., habitat acquisition and/or restoration) that may benefit both the BDCP and other regional conservation plans.

<sup>3</sup> Water Code § 85320.

<sup>4</sup> Water Code § 85280

## 7.2.9 Coordinating with Flood Control Agencies

In the design and implementation of conservation actions that could directly or indirectly affect flood control capabilities, the IO will coordinate with agencies responsible for flood control in the Plan Area, including USACE, DWR, Central Valley Flood Protection Board, reclamation boards in the delta, and local flood control agencies and water districts.

## 7.2.10 Protecting and Defending Against Legal Challenges

The IO, in coordination with the Implementation Board, supporting entities, fish and wildlife agencies, and other appropriate public agencies, will help direct efforts to defend against legal challenges to the BDCP or its associated State and federal authorizations. As necessary, the IO may also provide funding for legal counsel to address the range of legal issues associated with implementation, including: defense against litigation related to the BDCP, liability associated with land acquisition and related matters, disputes arising out of contractual agreements, and general, routine in-house legal matters.

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## 7.2.11 Overseeing Plan Amendments

In the event that an amendment to the BDCP and its authorizations is necessary, the IO will compile information and prepare documentation necessary to support such an amendment and will seek to obtain approvals from the applicable fish and wildlife agencies.

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## 7.2.12 Implementing Mitigation Measures Identified in BDCP-related Environmental Documentation under NEPA and CEQA

Subject to the approval of the NEPA and CEQA lead agencies conducting the environmental review of the BDCP under NEPA and/or CEQA and with the concurrence of the Program Manager, the IO will assume responsibility for the implementation of the mitigation measures identified in the final Environmental Impact Study and Environmental Impact Report documents (EIS/EIR) for the Plan on behalf of the lead agencies. Similarly, the IO may assume, subject to lead agency approval, responsibility for the implementation of mitigation measures set out in NEPA and/or CEQA documents prepared for the purpose of implementing actions included in the BDCP. The role of the IO in implementing such mitigation measures will be limited to those measures. Such mitigation measures must be associated with either the BDCP EIS/EIR prepared for the BDCP or other environmental review documentation required necessary for the implementation of BDCP actions an action set out in the BDCP.

## 7.2.13 Undertaking Other Responsibilities

The IO will also engage in a number of other actions necessary for the proper implementation of the BDCP. For instance, the IO will institute a program to monitor compliance with the terms and conditions of the BDCP and the BDCP EIR/EIS (as per agreements with NEPA/CEQA lead agencies). The IO will and provide the fish and wildlife agencies, on a mutually-agreed upon

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time-frame, with reports detailing on the the results of the compliance monitoring program (Section 6.2 *Compliance and Progress Reporting* and Section 7.3, *Implementation of the Conservation Strategy*). The IO ~~may~~ will also obtain, on behalf of DWR and/or Reclamation, other regulatory authorizations and permits necessary to implement BDCP conservation actions (Section 7.4, *Regulatory Compliance Related to BDCP Implementation*). The IO will also ~~and~~ will engage in public outreach and education (Section 7.5, *Public Outreach*)

### 7.3 IMPLEMENTATION OF THE CONSERVATION STRATEGY

The Program Manager will be responsible for planning, overseeing, and conducting actions set out in the BDCP Conservation Strategy (Chapter 3, *Conservation Strategy* and Chapter 6, *Plan Implementation*). The Program Manager will be afforded sufficient flexibility to use supporting entities and the fish and wildlife agencies to undertake certain actions that will enhance the overall effectiveness of the Conservation Strategy and yield greater efficiencies in plan implementation. The following sets out the tasks and responsibilities of the IO regarding the implementation of the Conservation Strategy.

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#### 7.3.1 Implementation of the Habitat Protection and Restoration Conservation Measures

The IO will take actions directly or through the supporting entities to implement conservation measures related to the protection of existing habitat and the enhancement and restoration of habitat within the identified restoration opportunity areas (ROAs) and conservation zones, as well as within other areas in the Plan Area, as described in Chapter 3, *Conservation Strategy*. These measures will primarily involve actions to acquire lands, restore or improve habitat conditions, and manage and maintain conservation lands. The IO will work with, and may contract with the Delta Conservancy or the supporting entities to carry out the conservation measures associated with habitat protection and restoration.

##### 7.3.1.1 Acquisition and/or Lease of Property Interests

Pursuant to the authorities of DWR, Reclamation, and/or other the a Authorized eEntities, the IO may acquire interests in real property to facilitate the implementation of a habitat protection and/or restoration conservation measure. Similarly, under the direction of the IO, other entities that have been selected to implement such conservation measures may also acquire interests in real property, as described in Chapter 3 *Conservation Strategy*. The tasks related to the acquisition of fee interest and/or conservation easements, for the purpose of habitat protection, restoration, and creation, will include, among other things:

- Routine “due diligence” review of real property;
- Biological “due diligence” to assess habitat/restoration values;
- Appraisal of property, including oversight of the appraisal process;

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- Negotiation and execution of the transaction; and
- Receipt of title or easement to lands.
- Select appropriate mechanism or instrument to ensure the protection of conservation lands.

The selected entity will also acquire or lease lands or facilities, or, with the consent of the Program Manager, contract with the Delta Conservancy or other appropriate entities to do so, for the purpose of conducting scientific research and monitoring, housing administrative offices and equipment, and undertaking other activities as necessary to administer and implement the measure. Interests in land acquired pursuant to the BDCP may be conveyed to the Delta Conservancy, DFG, FWS, or other entities, as appropriate.

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### 7.3.1.2 Management of Land

The IO will oversee the management and maintenance of lands acquired for conservation, as described in Chapter 3 *Conservation Strategy*, and will select entities that will be responsible for carrying out such management and maintenance. Tasks associated with land management will generally include:

- Habitat management;
- Invasive species control;
- Security patrol;
- Liaison with neighboring landowners;
- Payment of [description of appropriate in lieu payments, e.g., property taxes]
- Enforcement of easement terms and conditions;
- Mosquito abatement;
- Management of vegetation on flood control facilities to maintain flood flow capacity;
- Species and habitat monitoring;
- Public access management;
- Emergency response;
- Safety of nearby aircraft operations;
- Research activities;
- Educational services; and
- Agricultural lease management.

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**7.3.1.3 Maintenance of Facilities and Improvements**

The IO will oversee the maintenance and operation of all ~~related facilities and improvements associated with lands acquired for the purpose of habitat conservation, such as buildings, fences, levees, roads,~~ as described in Chapter 3, *Conservation Strategy* and necessary for support and protection conservation lands.

**7.3.1.4 Funding of Activities of Other Entities**

The IO may provide funding to other entities (such as local governments engaged in regional conservation planning processes), subject to appropriate conditions and oversight, to implement habitat and species conservation efforts, both inside and outside the Plan Area, that help advance the biological goals and objectives of the BDCP, as described in Chapter 3, *Conservation Strategy*.

**7.3.2 Implementation of Water Operations Conservation Measures****7.3.2.1 Implementation of Water Operations Conservation Measures and the Operations of Water Facilities**

Implementation of water facilities and water operations conservation measures as described in Chapter 3 *Conservation Strategy* will be the responsibility of DWR and Reclamation, or entities with whom they may contract, consistent with their existing responsibilities and authorities.



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### ~~7.3.2.3 Real Time Operations Response Team~~

~~7.3.2.3 To enhance the effectiveness of the water operations conservation measure, a “Real Time Operations Response Team” (Response Team) will be established. The Response Team will consist of representatives from DFG, USEWS, NMFS, DWR, and Reclamation. The function of this team will relate to real-time operations, which are not necessary for or related to compliance with (i) the underlying regulatory authorizations issued pursuant to the Plan, (ii) the adaptive management process for water operations or other conservation actions, pursuant to Section 3.7.3, or (iii) the Annual Water Operations Plan pursuant to Section 6.2.2.<sup>5</sup> Operations for the purpose of such conservation requirements will be administered as provided in the applicable chapters of the BDCP, the Implementing Agreement, and the associated regulatory authorizations.~~

### ~~7.3.2.3 Role of the Real Time Operations Response Team~~

~~7.3.2.3 The Response Team will be responsible for making real-time operations decisions. These real-time operations decisions will be made for the purpose of providing additional benefits to fish species covered by the Plan. Any operational changes that are directed by the Response Team will be limited to those actions that fall within the criteria established by the BDCP CM1 Water Facilities and Operations (Chapter 3, Conservation Strategy), other applicable regulatory constraints, and the Annual Water Operations Strategy (Section 6.2, Compliance and Progress Reporting). The fish and wildlife agencies will be responsible for determining whether proposed real time operational actions are likely to benefit covered fish species. The Response Team will ensure that any proposed real time operational action is consistent with the requirements of BDCP CM1 Water Facilities and Operations (Chapter 3, Conservation Strategy), other applicable regulatory constraints, and the Annual Water Operations Strategy (Section 6.2, Compliance and Progress Reporting). DWR and Reclamation will implement the real time action.~~

~~7.3.2.3 Any member of the Response Team may propose, in real time (e.g., hourly/daily/weekly), an operational action intended to achieve the purposes specified above. A proposed action will be adopted by the Response Team and implemented by DWR and/or Reclamation only if the fish and wildlife agencies and the operator of the affected project (e.g., DWR and/or Reclamation) jointly agree to the proposed operational change.~~

<sup>5</sup> The water operations conservation measure (CM1) and the adaptive management program provide for adjustments to be made to water operations on an ongoing basis. The operational flexibility of CM1 and the process by which adaptive changes may be made to that measure are set out in detail in Chapters 3 and 6.

~~7.3.2.3 Real-time water operations actions will be designed to enhance fish benefits without compromising the water supply targets established in the Annual Water Operations Strategy, as revised in the Seasonal Operations Strategies. The Response Team's decisions will take into account upstream reservoir operations and other SWP and CVP operational requirements, as well as the allocation, amount, and timing of water delivered, including surplus water that may be available through Article 21 of the State water contracts or section 215 of the CVP contracts, to the CVP or SWP customers within any water year. Notwithstanding the role of the Response Team, DWR and Reclamation will retain ultimate legal responsibility for the implementation of water operations conservation measures and for compliance with the Plan and its associated regulatory authorizations. Similarly, the fish and wildlife agencies will retain legal authority to oversee, enforce, modify, or revoke such authorizations, as described in Chapter 6, Plan Implementation, under applicable laws and regulations.~~

~~7.3.2.3 Coordination between the Program Manager and the Response Team~~

~~7.3.2.3 The Program Manager will coordinate with the Response Team and retain responsibility for overseeing, monitoring, and reporting on the implementation of the water operation conservation measures. The Program Manager will also establish processes to ensure that the recommendations of the Response Team regarding the implementation of water operations conservations measures are transparent and understandable. Water operations will be described each year in a water operations report. Review and reporting requirements on water operations are described in Section 6.2, Compliance and Progress Reporting.~~

~~7.3.2.3 Responsibility of the Response Team to Balance Conservation and Water Supply Goals~~

~~7.3.2.3 The Response Team will be required to take into account the effect of its operational decisions on water supply. While the Response Team's primary role will be to enhance the effectiveness of the water operations conservation measures, it will make real time decisions in a manner that considers water supply and timing of delivery from that which would have occurred without variations from the expected operations set forth in the Annual Water Operations Strategy.~~

~~7.3.2.3 In making real-time decisions regarding the implementation of operations-related conservation measures, the Response Team will utilize data, information, and analysis generated from fisheries and operational technical groups and, where appropriate, outside scientific experts. Specifically, the Response Team will take into account real-time data derived from work conducted by the following groups (or their~~

successors or equivalents, if any), including current fish surveys, flow and temperature information, and determinations regarding salvage or loss at the project facilities; and information about public health, safety, and water supply reliability;<sup>6</sup>

**7.3.2.3 The Sacramento River Temperature Task Group (SRTTG):** The SRTTG is a multiagency group formed pursuant to SWRCB Water Rights Orders 90-5 and 91-1, and the NMFS biological opinion, to assist with improving and stabilizing Chinook populations in the Sacramento River. Annually, Reclamation develops temperature operation plans for the Shasta and Trinity divisions of the CVP. Reclamation considers impacts on winter-run and other ESUs of Chinook salmon, and associated project operations. The SRTTG meets initially in the spring to discuss biological, hydrologic, and operational information, objectives, and alternative operations plans for temperature control. Once the SRTTG has recommended an operation plan for temperature control, Reclamation then submits a report to the SWRCB, generally on or before June 1st each year. After implementation of the operation plan, the SRTTG may perform additional studies and commonly holds monthly meetings, as needed through the summer and into fall, to develop revisions based on updated biological data, reservoir temperature profiles and operations data. Updated plans may be needed for summer operations protecting winter-run, or in fall for fall-run spawning season. If there are any changes in the plan, Reclamation submits a supplemental report to SWRCB and to NMFS for review and concurrence.

**7.3.2.3 Smelt Working Group (SWG):** The SWG evaluates biological and technical issues regarding delta smelt and develops recommendations for consideration by the USFWS. Since the longfin smelt became a state candidate species in 2008, the Working Group has also developed for DFG recommendations to minimize adverse effects to longfin smelt. USFWS chairs the group which consists of representatives from USFWS, DFG, DWR, EPA, and Reclamation. The SWG compiles and interprets the latest near real-time information regarding state- and federally-listed smelt, such as stages of development, distribution, and salvage. If they agree that a protection action is warranted, the SWG submits their recommendations in writing to USFWS and DFG. The Delta Smelt Risk Assessment Matrix (DSRAM) outlines the conditions when the Working Group will convene to evaluate the necessity of protective actions and provide FWS with a recommendation. This generally occurs weekly during the months of January through June,

<sup>6</sup> Additional working groups have been created and governed by SWRCB orders and NMFS and USFWS biological opinions. These work groups are listed here for informational purposes and are not necessary to the implementation of the BDCP

~~when smelt salvage at CVP and SWP has occurred historically. However, the SWG may meet at any time at the request of USFWS. Further, with the State listing of longfin smelt, the group will also convene based on longfin salvage history at the request of DFG.~~

~~**7.3.2.3 Delta Operations for Salmon and Sturgeon (DOSS) Group:** NMFS chairs this working group, which consists of biologists, hydrologists and other staff with relevant expertise from Reclamation, DWR, DFG, and USFWS and may include USGS, EPA, and Regional Water Quality Control Board participation. The DOSS provides recommendations for real-time management measures to reduce adverse effects to salmonids and green sturgeon by coordinating Delta Cross Channel (DCC) gate operations, fishery protection closures, water releases, and/or export reductions. Inputs such as fish life stage and size development, current hydrologic events, fish indicators (such as catch indices), salvage at the export facilities, and current and projected Delta water quality conditions are some of the factors used to make recommendations. The DOSS will coordinate with the SWG and other technical teams to maximize benefits to all listed species.~~

~~**7.3.2.3 American River Group (ARG):** In 1996, Reclamation established a working group for the Lower American River, known as ARG. Although open to the public, the ARG meetings generally include representatives from several agencies and organizations with on-going concerns and interests regarding management of the Lower American River. The formal members of the group are Reclamation, USFWS, NMFS, and DFG. The ARG convenes monthly or more frequently if needed, with the purpose of providing fishery updates and reports for Reclamation and NMFS to help manage Folsom Reservoir for fish resources in the Lower American River.~~

~~**7.3.2.3 San Joaquin River Technical Committee (SJRTC):** The SJRTC meets to plan and implement the Vernalis Adaptive Management Plan (VAMP) each year, and oversees two subgroups: Biology and Hydrology. These two subgroups are charged with certain responsibilities, and must also coordinate their activities within the San Joaquin River Agreement (SJRA) Technical Committee. VAMP was officially initiated in 2000 as a 12-year experimental/management program under the SJRA and SWRCB Decision-1641.~~

#### **7.3.2.3.2.2 Annual Reporting and Planning for Water Operations**

~~Planning and reporting requirements for the IO, DWR, Reclamation, and the Response Team are set out in Section 6.2, *Compliance and Progress Reporting*. The Program Manager will post on the BDCP website all plans and reports, including subsequent revisions to those plans or reports, required under Section 6.2, including the Annual Water Operations Strategy and the Annual Water Operations Report. As part of those postings, the Program Manager will include~~

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information, on a daily basis, about planned and actual water diversions, including updates on revisions to the Annual Water Operation Strategy that are made through the Seasonal Operations Strategy process. An accounting of actual diversions, including daily, weekly, monthly, and yearly operational levels, will also be posted. The Program Manager will describe and explain operational changes, including departures from planned or anticipated diversion levels, in terms that are understandable to the general public.

### 7.3.3 Implementation of All Other Conservation Measures

The Program Manager, through the IO, will be responsible for the implementation of the other conservation measures described in Chapter 3, *Conservation Strategy*. The IO may undertake conservation actions directly or arrange for funding to support actions carried out by supporting entities, as described in chapter 3 *Conservation Strategy*. ~~The funds may be provided to supporting entities will likely be for the purpose of implementing to implement~~ conservation measures that address the adverse effects of other stressors, such as toxic contaminants, nonnative predatory species, low dissolved oxygen zones, and entrainment unrelated to covered activities.

### 7.3.4 Management of Biological Monitoring, Scientific Research, and Reporting Programs

The Science Manager will be responsible for the overall management and oversight of the BDCP biological monitoring and research program, including the implementation of monitoring-related activities, as described in Chapter 3 *Conservation Strategy* (Section 3.6 *Monitoring and Research Program*).

The Science Manager will identify technical staffing needs and requirements necessary to adequately implement the biological monitoring program. The Science Manager will utilize the Interagency Ecological Program (IEP) to assist in the monitoring program. The Science Manager will oversee the development and implementation of the monitoring program and related scientific activities, with the assistance of the IEP agencies and in coordination with the Delta Science Program. ~~The Science Manager will establish the framework for the monitoring program (e.g., scope, methodologies, and protocols), in coordination with IEP and the fish and wildlife agencies, Delta Science Program, and supporting entities.~~ The Science Manager, in collaboration with these entities, will develop and implement a process for compiling, evaluating, and synthesizing the results of monitoring activities, and will maintain databases and the results of data analysis, obtained through the monitoring program and expand on that currently developed by IEP.

~~The Science Manager will also manage the BDCP research program, as described in Chapter 3 *Conservation Strategy* (Section 3.6 *Monitoring and Research Program*), in coordination with the IEP agencies and the Delta Science Program. The BDCP Science Manager will identify research priorities to address specific uncertainties, and will research program will include~~

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1 establishing research goals and priorities and administering a process to select and coordinate  
2 researchers who will be involved in the program. In addition, the Science Manager. The  
3 Science Manager will be responsible for the compilation and synthesis of the results of studies  
4 and analysis undertaken by other entities and organizations that are assisting in the are of interest  
5 and assistance to BDCP implementation of the Plan. The Science Manager will also coordinate  
6 BDCP funding for research by other entities and organizations, as described in Section 3.6  
7 *Monitoring and Research Program.*

8 The Program Manager will look to the Delta Science Program and Independent Science Board  
9 for science support and review. As appropriate, the Science Manager will seek and obtain input  
10 and advice from independent scientists through the Delta Science Program. Matters relating to  
11 the conduct of scientific reviews, and the acquisition of independent scientific advice to assist in  
12 the implementation of the BDCP, shall be conducted in a manner that ensures their independence  
13 and scientific integrity. The Science Manager will work with the Chief Scientist for the Delta  
14 Science Program and IEP Lead Scientist in making sure BDCP science activities, reporting, and  
15 reviews are coordinated with other science activities being conducted in the Delta

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16 The Program Manager will track plan implementation actions and comply with the reporting  
17 requirements of the Plan, as described in Section 6.2 *Compliance and Progress Reporting*.  
18 Reports prepared by the IO will include, among other things, the results of monitoring and  
19 research, an assessment of overall plan performance, and an accounting of the distribution and  
20 expenditures of funding by the various entities engaged in plan implementation activities. See  
21 Section 6.2 *Compliance and Progress Reporting* for specifics on reporting requirements.

22 The Program Manager may contract with one or more of the ~~Authorized entities~~ Entities,  
23 supporting entities, or consultants when appropriate to ensure completion of required monitoring,  
24 data analysis, and scientific research.

### 25 7.3.5 Management of the Adaptive Management Program

26 The Science Manager will manage the BDCP adaptive management program, as described in  
27 Chapter 3 *Conservation Strategy* (Section 3.7 *Adaptive Management Program*). The Science  
28 Manager will establish and chair an Adaptive Management Team to assemble, synthesize, and  
29 analyze the results of BDCP monitoring efforts and integrate the results of new and relevant  
30 scientific research and studies conducted by other parties, including the Delta Science Program.

31 Based on this information, the Science Manager will facilitate and coordinate discussion and  
32 consideration of adaptive management issues among the various participating entities, including  
33 the Implementation Board, the fish and wildlife agencies, and the Stakeholder  
34 Committee Council as part of the process of making decisions based on the adaptive management  
35 program.

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The decision-making process for adaptive management changes, including the roles and responsibilities of the various entities in the BDCP implementation structure, is described in Section 3.7 *Adaptive Management Program*

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### 7.3.6 Implementation of Measures in Response to Changed Circumstances

The Program Manager, through the IO, will be responsible for recognizing and responding to those changed circumstances identified in the plan, and for implementing those responses set out in the BDCP to address those changed circumstances, as described in Section 6.3 *Regulatory Assurances and Changed Circumstances and Unforeseen Circumstances*. The Program Manager will establish a process to ensure timely engagement of the Implementation Board, a Authorized Entities—entities, fish and wildlife agencies, and the Stakeholder Committee Council in the identification and response to such changed circumstances.

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## 7.4 REGULATORY COMPLIANCE RELATED TO BDCP IMPLEMENTATION

The Program Manager, through the IO, will be responsible for ensuring that the BDCP is properly implemented, including ongoing compliance with the elements of the Plan and the terms and conditions of the associated regulatory authorizations. The IO will also identify, seek, and obtain from State and federal agencies any other regulatory permits or authorizations that are necessary to effectuate Plan implementation. To further ensure that the BDCP is being properly implemented over time, the Program Manager will maintain regular contact with the Permit Oversight Board.

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### 7.4.1 Maintaining Permits/Authorizations and Obtaining Amendments

The Program Manager will establish a process to ensure compliance with all permits and authorizations related to BDCP implementation. If amendments or modifications to any of these permits or authorizations become necessary, the Program Manager and the authorized entities/Authorized Entities will work with the applicable agency(ies) to develop the necessary documentation and obtain the any such amendments.

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### 7.4.2 Obtaining Additional Regulatory Authorizations

Certain specific regulatory authorizations (e.g. water rights) will need to be completed/obtained prior to implementation of certain the BDCP actions. The Program Manager will oversee efforts to obtain any such Other regulatory authorizations that are necessary for the implementation of BDCP actions. The Program Manager will generally assume responsibility for identifying and seeking regulatory will be acquired as necessary during BDCP implementation. This section describes those authorizations that happen during BDCP implementation.

The Program Manager will identify and seek regulatory authorizations necessary to implement BDCP actions, unless the applicable Authorized Entity chooses to do so.

The EIR/EIS for the BDCP will provide sufficient environmental review and analysis of the proposed adoption of the Plan by DWR, CVP-related actions undertaken by Reclamation, and of the proposed issuance of take authorizations by the State and federal fish and wildlife agencies pursuant to the Plan. The EIR/EIS, and may also provide sufficient environmental review to support other anticipated federal and State regulatory authorizations. However, additional NEPA and CEQA review, as well as compliance with other environmental laws, will be necessary for a number of BDCP-related actions.

The IO will oversee, monitor, and assist in the likely need, the efforts of supporting entities to obtain State and/or federal permits or authorizations, and conduct appropriate or conduct environmental review, under the following State and federal laws, regulations, or processes for the purpose of implementing BDCP prior to the implementation of certain conservations measures. Compliance with the following laws and regulatory processes will likely be necessary for certain BDCP actions:

- Sections 404 and 401 of the Clean Water Act;
- Sections 10 (33 USC 403) and 14 (33 USC 408) of the Rivers & Harbors Act of 1899;
- Section 1602 of the California Fish and Game Code (Streambed and Lakebed Alteration Agreements);
- Section 106 of the National Historic Preservation Act;
- Encroachment permits from the Central Valley Flood Protection Board and reclamation districts to conduct work on levees;
- Federal Energy Regulatory Act compliance through the Federal Energy Regulatory Commission; and
- The National Environmental Policy Act and the California Environmental Quality Act, as necessary for certain project-related actions.

This list is not intended to be comprehensive and the Program Manager would be responsible for compliance with any additional regulations necessary for Plan implementation.

## 7.5 PUBLIC OUTREACH

The Program Manager, through the IO, will implement a public outreach and education program to promote public awareness and provide opportunities for public input on matters concerning plan implementation. General objectives of the outreach program will be to:

- Promote public awareness of and understanding about the plan's purpose, specific conservation measures and their implementation;

- Provide streamlined and timely access to information;
- Provide contact with decision-makers; and
- Maintain a transparent process for understanding, clarifying and addressing public input and comments.

Particular emphasis will be placed on outreach efforts focused on the following stakeholders: Delta residents, including landowners, farmers, and business owners; environmental community; agricultural community; boaters; commercial fishing interests; recreational anglers; local governments; reclamation districts; irrigation districts; public utilities; public and private landowners adjacent to BDCP conservation areas; and Native American tribes.

The public outreach and education program will include, at a minimum:

- **Informational Material.** The preparation and distribution of general information materials such as reports, quarterly electronic newsletters, and issue-specific fact sheets in timely manner so as to facilitate public understanding and meaningful public input.
- **Interactive Website.** Development and maintenance of an interactive website that provides real-time access to information, updates regarding implementation activities, and expanded opportunities for public engagement and input. Visual elements such as maps and webcasts will be used to further aid information sharing and public understanding.
- **Speakers Bureau.** Presentation of BDCP implementation information to various groups and at public meetings that occur throughout the state, as well as targeted audiences including Delta communities, Tribes, and specific statewide stakeholder interests.
- **Annual Public Workshops.** Commitment to annual public workshops and others as needed to provide timely opportunities for public dialogue, input and comment regarding a wide range of implementation issues.
- **Environmental Justice.** An environmental justice outreach program will be integrated into overall outreach activities described above to provide minority and low-income communities in and near the Delta with access to information about the plan's implementation and opportunities for input. Outreach techniques include creating and maintaining a dedicated multilingual web page, providing availability of translation services at public workshops and community presentations, and contacting outreach to ethnic media outlets.